

EXHIBIT

#93

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
CASE NO. 07-15195 (MS)
CHAPTER 11

COPY

ORIGINAL

In re BAYONNE MEDICAL CENTER, :
Debtor, :
ALLEN D. WILEN, :
Plaintiff, :
-vs- :
BAYONNE/OMNI DEVELOPMENT, :
LLC, et al., :
Defendants. :

DEPOSITION OF:
HERMAN BROCKMAN

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
Jersey, at the offices of EDWARDS, ANGELL, PALMER &
DODGE, L.L.P., One Giralda Farms, Madison, New
Jersey, on MONDAY, MARCH 29, 2010, commencing at
12:28 p.m., pursuant to Notice.

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Court Reporting & Litigation Support Services
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www.depolinklegal.com

1 A Okay.

2 Q Have you seen this document before
3 today?

4 A It's a promissory note. No. Before today?

5 Q Yes.

6 A Yeah, I saw it, I believe, before the
7 closing, when he told me about the \$1,000,000 note.

8 Q Going back to your 2004 Examination.

9 A What page?

10 Q We'll start at Page 32, at Line 21.

11 I'll read it into the record, it's short.

12 "QUESTION: Do you have a
13 recollection of discussing a promissory note
14 during that meeting?"

15 This is a referring to a meeting that you
16 had with Mr. Eisenreich.

17 "ANSWER: It probably was, because
18 Mr. Eisenreich told me that he had lent the
19 hospital through Mr. Evans \$1,000,000.

20 "QUESTION: When did Mr. Eisenreich
21 tell you that?

22 "ANSWER: A couple of days before the
23 closing. I believe it was in the beginning
24 of December." I'm continuing.

25 "QUESTION: So sometime in early

1 December it's your recollection that that's
2 when Mr. Eisenreich advised you that he
3 personally had loaned \$1,000,000 to the
4 hospital?

5 "ANSWER: I don't know if it was him
6 personally or his corporation, I don't know
7 it was. He said that he lent \$1,000,000 to
8 the hospital.

9 "QUESTION: Is that the first that
10 you had ever learned that he had loaned
11 \$1,000,000 to the hospital?

12 "ANSWER: Yes. In fact, I told him I
13 knew nothing about it.

14 "QUESTION: What did he say in
15 response to that?

16 "ANSWER: He said, 'You signed it.'
17 I said, 'I did not sign it.'"

18 Are those answers to those questions
19 accurate?

20 A Yes.

21 Q When he said, "You signed it," and
22 you said, "I did not sign it," is that when he
23 produced a copy of the note, which you testified to
24 earlier?

25 A I believe so.

1 Uniform Commercial Code, also known as UCC financing
2 statement to sign in connection with the \$1,000,000
3 payment that the Omni entity made to the hospital?

4 A Not that I recall, no.

5 Q Did Carrie Evans ever tell you that
6 she wanted you to sign a UCC financing statement for
7 the hospital to secure the repayment of the
8 \$1,000,000 payment?

9 A No.

10 Q Did anyone ever tell you that you
11 were being asked to sign a UCC financing statement
12 in order to secure the repayment of the \$1,000,000
13 payment that the Eisenreich entity had made to the
14 hospital?

15 A No.

16 Q Did anyone ever tell you that Robert
17 Burney agreed in your absence to sign a UCC
18 financing statement to secure the repayment of the
19 \$1,000,000 to the Eisenreich entity?

20 A No.

21 Q Right behind D-7 is D-8 in that
22 package of exhibits, a document entitled "Corporate
23 Resolution." Look at it, if you would, please.

24 A Okay.

25 Q Can you authenticate the signature of

1 Robert H. Evans on this document?

2 A Yes.

3 Q Is the signature that purports to be
4 that of Herman Brockman on this document genuine or
5 not?

6 A No.

7 Q Do you know who signed the name
8 Herman Brockman on this document?

9 A No.

10 Q Has anyone ever told you that they
11 know who signed the name Herman Brockman on this
12 document?

13 A No.

14 Q Do you suspect who signed the name
15 Herman Brockman on this document?

16 A No.

17 Q Has anyone ever told you that they
18 suspect who it was who signed your name on this
19 document?

20 A No.

21 Q Do you know when this document was
22 prepared?

23 A No.

24 Q Do you know who prepared it?

25 A No.

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Debtor and :
Debtor-in-Possession; and :
ALLEN D. WILEN, in his : DEPOSITION OF:
capacity as Liquidating :
Trustee and Estate : CAROLINE EVANS
Representative for the Estate :
of Debtor, Bayonne Medical : VOLUME II
Center, : (Pages 230-412)
Plaintiff, :
-vs- :
BAYONNE/OMNI DEVELOPMENT, :
L.L.C., a New Jersey limited :
liability company; et al., :
Defendants. :

B E F O R E:

SHARON B. STOPPIELLO, a Certified Court
Reporter and Notary Public of the State of New
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Livingston Avenue, Roseland, New Jersey, on TUESDAY,
JUNE 1, 2010, commencing at 9:27 a.m., pursuant to
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1 it to you and ask you one or two questions about it.

2 It begins June 23, 2006 at 11:59 a.m. from Connie

3 Tauber. Do you know who Connie Tauber is?

4 A. She works for Omni.

5 Q. To Carrie Evans, and it says, "Is the
6 account name Bayonne Medical Center?" Then on the
7 same date at 12:10 Carrie Evans to Connie Tauber,
8 "Yes, the account is Bayonne Medical Center. I
9 mentioned to Avery that Mr. Brockman was not here on
10 Friday. I got his signature yesterday, and then he
11 left and then I got the correct UCC document. I can
12 have him sign on Monday or I can have Rob sign today
13 and fax it over now."

14 And the end of this e-mail chain is Avery to
15 Carrie, June 23 at 12:10 p.m., "No problem, have Rob
16 sign it. Thanks." And then it ends with Carrie
17 Evans to Avery, same date at 12:13 p.m., "Okay."

18 A. Okay.

19 Q. Have you seen that document?

20 MR. FALANGA: Object to the form.

21 A. Yeah. I mean, I'm on it, so yes, I
22 probably have seen it before. But there's something
23 missing here between these two things (indicating).

24 Q. I can only tell you this is the way I
25 received it. I can't improve upon it today.

1 A. This is the end of the e-mail.

2 MR. SAMSON: The balance of the
3 e-mail from Angelo Elmo to Carrie Evans.

4 THE WITNESS: Who's Angelo Elmo?

5 Q. I can't tell you. I'm just asking
6 you a question about that page.

7 MR. SAMSON: Just testify that you've
8 seen a portion of the document.

9 A. I've seen a portion of the document,
10 yes.

11 Q. And have you had a chance to read it?

12 A. Hold on. Okay, I've read it.

13 Q. Now, does that help refresh your
14 recollection that in June of '06 you communicated
15 with Avery to tell him that the promissory note had
16 been signed by Herman Brockman?

17 A. Yes.

18 MR. FALANGA: Object to the form.

19 Q. How did you know when you
20 communicated to Avery on June 23, '06 that Herman
21 Brockman had signed the note? How did you know at
22 that point that Herman Brockman had signed the
23 note?

24 MR. FALANGA: Object to the form.

25 A. I don't know exactly how I knew.

1 Either I had it or I was told he signed it, either
2 one of those.

3 Q. Do you remember, and then I think I
4 can be done with it, do you remember that Avery or
5 Avery's office asked you for a UCC or a Uniform
6 Commercial Code document in connection with this
7 loan transaction?

8 MR. FALANGA: Object to the form.

9 A. As I said before, I remember they
10 asked for a document. I didn't know what they were
11 referring to it as, but there was another document
12 involved. I didn't know the name of it.

13 MR. GRUEN: Mark this for me, please.

14 (E-mail chain, top one dated 6/22/06
15 from Connie Tauber to Carrie Evans, is
16 received and marked Carrie Evans-6 for
17 identification by the Reporter.)

18 Q. This is a document dated June 22, '06
19 from Connie Tauber to Carrie Evans, "Subject: Here
20 we go." Text, "The UCC is under separate cover."
21 Can you identify this document?

22 A. It's an e-mail from Connie to me, and
23 attached is a copy of the corporate resolution and a
24 copy of the promissory note.

25 Q. Did you receive something called "the

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1 Tauber was requiring a UCC as part of the loan
2 transaction?

3 MR. FALANGA: Object to the form.

4 A. At the time it was my understanding
5 she needed that document back, yes.

6 Q. And that was the document that had
7 been sent under cover of the e-mail of June 22 at
8 4:41 p.m. that we marked as Exhibit 38; is that
9 correct?

10 MR. FALANGA: Object to the form.

11 A. Yes.

12 Q. And then if you would jump to 17, BMC
13 17 in Exhibit 38, it purports to be an e-mail from
14 Connie Tauber to you. I ask you to identify it.

15 A. It's from Connie to me dated
16 July 13th, and it says, "I never received the
17 original UCC signed. I really need an original.
18 Please arrange that it goes out overnight."

19 Q. Do you remember receiving this
20 e-mail?

21 A. Yes.

22 Q. And what, if anything, did you do in
23 response to this e-mail?

24 A. I don't remember that.

25 Q. Do you know whether a signed UCC was

1 ever provided to or delivered to the Omni side?

2 MR. FALANGA: Object to the form.

3 A. Well, I know the document was signed,
4 yes.

5 Q. The UCC was signed?

6 A. Yes.

7 Q. How do you know that the UCC was
8 signed?

9 A. Because I know that Rob signed it.

10 Q. And by "Rob" you mean Rob Burney?

11 A. No, Rob Evans signed it.

12 Q. I'm sorry. Rob Evans signed the UCC
13 document in the same form as we saw attached at
14 Exhibit 38?

15 A. That was the form that I was
16 referring to.

17 Q. Do you know if that document was ever
18 delivered to Omni or Eisenreich or Connie?

19 A. Absolutely? I don't remember when it
20 was, but I think it was.

21 Q. Look at the next page, which is BMC
22 Bates 20. This purports to be a July 18th e-mail
23 from Connie to you. Can you identify this?

24 A. It says, "Enclosed please find an
25 original UCC. Please have it signed and overnight

1 it back to me."

2 Q. Do you recall receiving this e-mail?

3 A. No, but I remember the discussions
4 surrounding the document.

5 Q. Can you recall those for the record,
6 please?

7 A. She needed these forms signed and
8 then she needed the original, something with an
9 original signature.

10 Q. Had the form that Exhibit 38 suggests
11 that was sent to you on June 22 been misplaced and
12 that's why she was sending it again?

13 A. I don't remember, Mr. Gruen.

14 Q. And is it your testimony, then, that
15 you did have it signed and sent back to Connie?

16 A. I do remember giving it to Susan, to
17 Rob's secretary, saying this is part of the
18 documents. I do, I do remember that.

19 Q. And it was after that that Rob signed
20 it?

21 MR. FALANGA: Object to the form.

22 A. It was blank when I gave it to her.

23 Q. So for sure it was after that that
24 Rob signed it?

25 A. Yes.

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1 Q. Why did you write it?

2 A. I don't know the answer to that.

3 Q. Why were you trying to make Mr.
4 Eisenreich feel "secure" regarding "my CBO money"?

5 A. We were asking him for \$1,000,000.
6 I'm assuming it was referring to that.

7 Q. Did Mr. Eisenreich convey to you that
8 he needed to be secure regarding the loan?

9 A. Not specifically that way, no.

10 Q. And then he replies on Wednesday,
11 "Are you able to talk at around 4:00 or later?
12 Thanks." Do you recall getting that e-mail?

13 A. Not that specific e-mail, no.

14 Q. Do you recall talking to him in or
15 about the first week of June regarding the CBO
16 money?

17 A. You know what? This specific
18 conversation I do not recall (indicating).

19 Q. Who is negotiating the loan from Mr.
20 Eisenreich on behalf of the hospital?

21 A. I mean, I think it was more than one
22 person. I mean I talked to him, Paul talked to him.
23 I'm allowed to say that we asked for help from our
24 attorneys, right?

25 Q. Yes.

1 A. We involved D.B. and Rob Burney
2 sometimes.

3 Q. But in terms of employees at the
4 hospital, it was either you or Mr. Mohrle?

5 A. I would say yes. I think Marvin had
6 a conversation with him once or twice, but I'm not
7 sure what that was about during the same period of
8 time.

9 Q. You're not sure if it was about the
10 loan, correct?

11 A. Correct.

12 Q. Are you positive that Mr. Mohrle had
13 communications --

14 A. Yes.

15 Q. -- with Mr. Eisenreich regarding the
16 loan?

17 A. Yes, I am.

18 Q. Why are you positive of that fact?

19 A. More than one of them took place
20 hands free in his office.

21 Q. So on a conference call?

22 A. Uh-huh.

23 Q. How long did the negotiation of the
24 loan last in terms of days? Did it go on for weeks?

25 A. I don't know.